



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Order 96-10-36

Served: October 30, 1996

Issued by the Department of Transportation
on the 24th day of October, 1996

Applications of

AMERICAN AIRLINES, INC.

AMERICAN INTERNATIONAL AIRWAYS, INC.

AMERIJET INTERNATIONAL, INC.

CONTINENTAL AIRLINES, INC.

NORTHWEST AIRLINES, INC.

POLAR AIR CARGO, INC.

SUN COUNTRY AIRLINES, INC.

USAIR, INC.

for exemptions or authorities under 49 U.S.C. section
40109 and the orders and regulations of the Department
of Transportation

Dockets OST-96-1652

OST-96-1605

47802

OST-96-1318

OST-96-1621

OST-96-1779

OST-95-239

OST-96-1841

OST-96-1590

OST-96-1691

OST-96-1775

ORDER

The captioned U.S. air carriers have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken.

Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its certificate(s) of public convenience and necessity, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or the aviation relationship between the United States and the foreign country involved, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.¹

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced U.S. air carriers (1) exemptions from the provisions of Section 41101 and where necessary 41504 or as noted in the attached notices, other sections of Title 49 U.S.C.; or (2) relief or authorizations as provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken;
2. In the conduct of the service, each applicant was to adhere to the conditions set forth in the Appendix, and to any other conditions as noted in the attached Notices of Action Taken;
3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and

¹ On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found that each U.S. air carrier applicant for an operating exemption is qualified to provide the services authorized.

4. We may amend, modify, or revoke this order at any time without hearing.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within ten (10) days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

Appendix

U.S. Carrier Standard Exemption Conditions

In the conduct of the operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with the requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted or confirmed by the attached order shall be effective only during the period when the holder is in compliance with the conditions imposed above.

RENEW

NOTICE OF ACTION TAKEN

September 25, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated: the confirming order or other decision document will be issued as soon as possible.

Application of American Airlines, Inc. filed 8/16/96 in Docket OST-96-1652 for:

XX Renew for two years the allocation of eleven weekly U.S.-Brazil combination frequencies for services between Dallas/Ft. Worth and Miami, on the one hand, and Sao Paulo, Brazil, on the other.

Applicant rep.: Carl Nelson, 202-496-5647 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX *Granted*

The above action was effective when taken: September 25, 1996, through September 25, 1998

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)

XX Authority granted is consistent with the aviation agreement between the United States and Brazil.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

- XX** Holder's certificate of public convenience and necessity
- XX** Standard Exemption Conditions (attached)

Remarks: Consistent with our standard practice, the frequency allocation awarded is subject to the condition that it will expire automatically and the frequencies will revert back to the Department if they are not used for 90 days. (See e.g. Orders 95-11-9 and 96-2-15).

NEW

NOTICE OF ACTION TAKEN

September 18, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated: the confirming order or other decision document will be issued as soon as possible.

Application of American International Airways, Inc. filed 9/12/96 in Docket OST-96-1605 for:

XX Exemption from Order 96-6-12; 90-day dormancy condition:

By Order 96-6-12 the Department issued American International Airways (AIA) a certificate of public convenience and necessity to provide scheduled all-cargo services between the United States and Brazil (Route 695). By its terms the certificate would expire August 4, 1996, unless AIA commences service by that date. On July 29, 1996, AIA sought exemption from its startup condition to the extent necessary to extend its proposed startup date to September 18, 1996. By Notice of Action Taken dated August 7, 1996, the Department granted the extension. AIA seeks extension of the September 18 startup date to November 4, 1996. AIA stated that it has not yet received the necessary license from the Brazilian Government but expected that appropriate Brazilian authority for its scheduled operations will be secured by or before November 4, 1996.

Applicant rep.: Mark W. Atwood, 202-342-5200 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX Granted (See Remarks)

The above action was effective when taken: September 18, 1996 through November 4, 1996

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)

Remarks: We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.

NOTICE OF ACTION TAKEN

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

XX Standard Exemption Conditions attached

Special Conditions/Remarks: **The U.S.-Mexico authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2.**

(See Reverse Side)

When Amerijet filed this application, it stated that it was not currently using the authority it was seeking to be renewed, but that it wanted the operational flexibility to implement services on these routes as market conditions improved. In January 1995, however, Amerijet filed a dormancy report stating that, with the exception of the Miami-Cancun market, all of the subject markets were dormant. Amerijet has also recently notified the Department that it continues to serve the Miami-Cancun market (pursuant to APA rights invoked upon the filing of the instant application), and also provides services in the Miami-Guadalajara market pursuant to exemption authority confirmed in Order 95-8-36. (In this connection, we note that the dismissal of the Miami-Guadalajara portion of the present request has no bearing on the effectiveness of the carrier's current Miami-Guadalajara exemption authority confirmed in Order 95-8-36). Amerijet advises, further, that it now has no plans to institute services in any of the other subject markets in Docket 47802.

NEW

NOTICE OF ACTION TAKEN

October 3, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of CONTINENTAL AIRLINES, INC. filed 4/26/96 in Docket OST-96-1318

XX Waiver of the 180 day advance filing requirement under Part 377

XX Certificate renewal under 49 U.S.C. 41102 to provide the following service:

Scheduled foreign air transportation of persons, property and mail between Houston, Texas, and the coterminal points Barranquilla, Bogota, and Cali, Colombia, via the intermediate point San Jose, Costa Rica. Continental also requested a waiver of the 180 day advance filing requirement under Part 377 of the Department's regulations in order to invoke its rights to provide continuous service during the pendency of this application.

Applicant rep: R. Bruce Keiner (202) 624-2615 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX **Granted Waiver Request (Part 377)**

XX **Deferred on Remainder of Application**

The above action was effective when taken : October 3, 1996.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues
Filing of a petition shall not stay the effectiveness
of this action.)

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX **Continental's certificate of public convenience and necessity**

XX **Standard Exemption Conditions attached**

Remark: Continental's certificate for this route (Route 645) is due to expire October 13, 1996. Grant of the requested waiver under Part 377 will keep the authority in effect until the Department takes final action on the carrier's application to renew the authority.

NEW

NOTICE OF ACTION TAKEN

September 11, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of CONTINENTAL AIRLINES, INC. filed 8/5/96 and supplemented 8/14/96 in Docket OST-96-1621 for:

XX Exemption from 49 U.S.C. § 41101 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Newark, New Jersey, on the one hand, and Aberdeen, Dundee, Edinburgh, and Glasgow, United Kingdom, on the other hand, and to combine its Newark-Aberdeen, Newark-Dundee, Newark-Edinburgh, and Newark-Glasgow service with service at other points which Continental is authorized to serve by certificates or exemptions, including Continental's existing authority to serve Manchester. Continental states that it plans to begin these services on or about September 16, 1996, under a code-share arrangement with Business Air Limited. Under the arrangement, Continental's "CO" designator code would be displayed on connecting Manchester-Aberdeen, Manchester-Dundee, Manchester-Edinburgh, and Manchester-Glasgow flights operated by Business Air for the transportation of Continental's through passengers between the United States and the U.K. points.

By letter dated August 20, 1996, counsel for the applicant notified the Department that all U.S. air carrier representatives served with the above-referenced application had been polled and that no one objects to the application.

Applicant rep:

(See Reverse Side)

XX Authority granted is consistent with the U.S.-U.K. Air Services Agreement and the June 5, 1995 Memorandum of Consultations between the United States and the United Kingdom

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard exemption conditions (attached)

Special Conditions/Remarks: The code-sharing operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the foreign air transportation be sold in the name of the carrier holding out the service in computer reservations systems and elsewhere, that the carrier selling such transportation accept all obligations established in the contract of carriage with the passenger (*i.e.* the ticket) and that the operator shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose air space the Federal Aviation Administration has issued a flight prohibition.

The route integration authority granted is subject to the condition that any service under this exemption be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of route integration authority requested should be construed as conferring upon Continental additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Continental notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in Continental's authority by virtue of the route integration exemption granted here, but that are not then being used by Continental, the holding of such authority by route integration will not be considered as providing any preference to Continental in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This authority is coextensive with the exemption authority and statement of authorization granted Business Air Limited by Notice of Action Taken dated September 11, 1996.

NEW

NOTICE OF ACTION TAKEN

September 30, 1996

This serves as interim notice to the public of the action, described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

In the matter of: **Continental Airlines, Inc.**, filed **9/25/96** in Docket **OST-96-1779** for:

XX Emergency exemption from Order 96-7-4; 90-day dormancy condition.

By Order 96-7-4, served July 2, 1996, Continental was awarded authority to serve the Newark, New Jersey-Panama City, Panama-Guayaquil, Ecuador market and was allocated seven weekly frequencies for this service effective July 2, 1996. That award was subject to the condition that the frequency allocation would expire automatically and the frequencies would revert back to the Department if they were not used for a period of 90 days. Continental seeks exemption from this condition through October 27, 1996, stating that it will not be able to institute service by September 30 (the 90th day it has held the frequencies) because it has not yet received authority from Ecuador for the operation of the Newark-Ecuador flights. Continental further states that it expects to receive approval from Ecuadorian authorities in time to begin using the frequencies on October 27, 1996.

Applicant rep.: R. Bruce Keiner (202) 624-2615 DOT Analyst: John Quay (202) 366-1052

D I S P O S I T I O N

XX GRANTED

The above action was effective when taken: September 30, 1996, through October 27, 1996.

XX Under assigned authority (14 CFR 385) by:

*PAUL L. GRETCH, Director
Office of International Aviation
(Petitions for review may be filed from now until 10
days after the confirming order/letter issues. Filing of a
petition shall not stay the effectiveness of this action.)*

Remarks: **We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.**

RENEW

NOTICE OF ACTION TAKEN

September 25, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated: the confirming order or other decision document will be issued as soon as possible.

Application of Northwest Airlines, Inc. filed 7/3/96 Docket OST-95-239

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between points in the United States and Dhaka, Bangladesh, via Amsterdam. Northwest plans to operate this service pursuant to a code-share arrangement with KLM Royal Dutch Airlines.

Applicant rep.: Megan Rae Poldy, 202-842-3193 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX *Granted*

The above action was effective when taken: September 25, 1996, through September 25, 1998

XX *Under assigned authority (14 CFR 385) by:*

*Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)*

XX **Authority granted is consistent with the overall state of aviation relations between the United States and Bangladesh.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX **Holder's certificate of public convenience and necessity**

XX **Standard Exemption Conditions (attached)**

Remarks: The code-sharing operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (i.e., the ticket) and that the operator shall not permit the code of its U.S. carrier code-

sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(See Reverse Side)

The authority granted here had been kept in force beyond its prescribed expiration date (September 1, 1996), pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 558(c), as implemented by 14 CFR Part 377, pending action on Northwest's timely filed renewal application.

The authority granted is coextensive with the duration of the code-share authority granted KLM on September 25, 1996.

NEW

NOTICE OF ACTION TAKEN

OCTOBER 4, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of NORTHWEST AIRLINES, INC. filed 10/4/96 in Docket OST-96-1841 for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between the terminal point Minneapolis/St. Paul, Minnesota, and Cancun, Mexico. Northwest plans to operate a seasonal service in this market beginning October 12, 1996.

Applicant rep: Megan Rae Poldy (202)842-3193 DOT Analyst: Terri Bingham (202)366-2390

DISPOSITION

XX) **Granted (see remarks)**

The above action was effective when taken: October 4, 1996, through October 4, 1998, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

XX Authority granted is consistent with the aviation agreement between the United States and Mexico.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX Holder's certificate of public convenience and necessity
XX Standard Exemption Conditions (attached)

Special Conditions/Remarks: **The U.S.-Mexico authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. Consistent with our standard practice, the dormancy notice period will begin October 12, 1996, Northwest's proposed start-up date for seasonal service in this market.**

We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served with the application.

NEW

NOTICE OF ACTION TAKEN

September 18, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated: the confirming order or other decision document will be issued as soon as possible.

Application of Polar Air Cargo, Inc. filed 9/11/96 in Docket OST-96-1590 for:

XX Exemption from Order 96-6-12; startup deadline:

By Order 96-6-12 the Department issued Polar Air Cargo a certificate of public convenience and necessity to provide scheduled all-cargo services between the United States and Brazil (Route 696). By its terms the certificate would expire August 4, 1996, unless Polar commences service by that date. On July 24, 1996, Polar Air sought exemption from its startup condition to the extent necessary to extend its proposed startup date to September 18, 1996. By Notice of Action Taken dated August 7, 1996, the Department granted the extension. Polar seeks extension of the September 18 startup date to November 4, 1996. Polar stated that it has not yet received the necessary license from the Brazilian Government but expected that appropriate Brazilian authority for its scheduled operations will be secured by or before November 4, 1996.

Applicant rep.: Alfred J. Eichenlaub, 202-637-9034 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX Granted (See Remarks)

The above action was effective when taken: September 17, 1996, through November 4, 1996

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)

Remarks: We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.

NEW

NOTICE OF ACTION TAKEN

September 25, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated: the confirming order or other decision document will be issued as soon as possible.

Application of Sun Country Airlines, Inc. filed 9/11/96 in Docket OST-96-1691 for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of property and mail between New York (JFK) and Los Angeles, on the one hand, and Seoul, Korea, on the other.

Applicant rep.: Dennis N. Barnes, 202-467-7060 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX *Granted*

The above action was effective when taken: September 25, 1996, through September 25, 1997

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)

XX Authority granted is consistent with the aviation agreement between the United States and Korea.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Remarks: We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.

NEW

NOTICE OF ACTION TAKEN

October 3, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated: the confirming order or other decision document will be issued as soon as possible.

Application of USAir, Inc. filed 9/25/96 in Docket OST-96-1775 for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Charlotte, North Carolina, and Montego Bay, Jamaica.

Applicant rep.: Cathleen Peterson, 202-973-7920 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX *Granted*

The above action was effective when taken: October 3, 1996, through October 3, 1998

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)

Authority granted is consistent with the aviation agreement between the United States and Jamaica.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Remarks: We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.

